

VZCZCXYZ0000
PP RUEHWEB

DE RUEHSV #0026/01 0220507
ZNR UUUUU ZZH
P 220507Z JAN 09
FM AMEMBASSY SUVA
TO RUEHC/SECSTATE WASHDC PRIORITY 0965
INFO RUCPDC/USDOC WASHDC
RUEATRS/DEPT OF TREASURY WASHDC 0171
RUCPCIM/CIMS NTDB WASHDC

UNCLAS SUVA 000026

STATE FOR EB/IFD/OIA AND EAP/ANP
PLEASE PASS TO USTR

SIPDIS

E.O. 12958: N/A
TAGS: [EINV](#) [KTBD](#) [OPIC](#) [USTR](#) [FJ](#)
SUBJECT: Fiji Investment Climate Statement 2009

REF: SECSTATE 123907

¶1. Paragraph 2 contains the text of the 2009 Investment Climate Statement for Fiji, per reftel.

¶2. Begin text:
Openness to Foreign Investment

In light of political events in Fiji and concerns about the treatment of some established foreign investors by Fiji authorities, potential investors should exercise considerable caution. In December 2006, the Republic of Fiji Military Forces overthrew the democratically elected government and replaced it with an interim government chosen by the military and headed by the military commander, serving as interim prime minister. The military dismissed parliament and declared a state of emergency. Interim government interference appears to have impaired the independence of Fiji's judiciary. The military repeatedly assured local and foreign investors that Fiji remains a safe place to invest and do business. However, in 2007, the long-term investment tax concession for one major U.S. investor was unilaterally and abruptly withdrawn. Fiji's tax authority also blocked exports of a renowned mineral water in a dispute with the bottler over transfer pricing.

Interim Government interference with business affairs has generally decreased since the months following the December 2006 coup. However, the validity of contracts or other agreements entered into with the current interim government may be subject to later interpretation by a court of law.

This report reflects the longer-term investment climate and notes where the coup has impacted it.

Generally, government restrictions and conditions are designed to ensure that investment is desirable for Fiji's development and the use of its resources. Fiji has a tradition of a strong judiciary where contractual rights are generally upheld. However, post-coup, the independence of the judiciary has come into question, raising concerns about due process of law.

Fiji's economy is shifting from a reliance on sugar and textiles to a focus on tourism and related industries. The once large textile industry now comprises a small but stable component of Fiji's exports. The sugar industry is dependent upon inflated prices paid by the European Union, but these prices are being phased out and sugar production is in decline.

Following a 6.6 percent contraction in 2007, Fiji's economy experienced a modest 1.2 percent growth in 2008. Forecasters predict low but positive economic growth of 2.4 percent in 2009.

The Fiji Trade and Investment Bureau (FTIB) is responsible for the promotion, regulation and control of foreign investment in the interest of national development. FTIB pursues this task in conjunction with relevant government ministries. Government

approval is required for all foreign investment in Fiji.

All businesses or enterprises with a foreign-investment component in their ownership are required to apply to the Chief Executive, Fiji Islands Trade and Investment Bureau, for the issuance of a Foreign Investment Registration Certificate (FIRC) and also pay a requisite application fee of F\$2,812.50. Applications for a FIRC are available on-line and the following documents must accompany the application:

1. A copy of the Shareholders Agreement and a copy of the Declaration of Shareholders, witnessed or certified by a justice of the peace, lawyer and/or chartered accountant, are to be submitted if local equity contribution is required;
2. A certified copy of the passport bio-data page, together with a recent colored passport size photo of all those associated with the business;
3. A police clearance report from the country of residence in the last 12 months or more; and
4. Proof of company registration abroad (if applicable).

Contact: The Chief Executive, Fiji Islands Trade & Investment Bureau, P.O. Box 2303, Government Buildings, Suva; Telephone: (679) 3315-988; Fax: (679) 3301-783; email: ftibinfo@ftib.org.fj; website: www.ftib.org.fj

The Foreign Investment Act stipulates that the approval process for investment applications should take no longer than 5 working days. Depending on the nature of the business, however, investors may also be required to obtain permits and licenses from other relevant authorities and should be prepared for delays.

Foreign investors are required a minimum equity level of investment of F\$250,000 (about US \$140,000) in cash to be brought in from offshore on or before the operational date of the business. Furthermore, certain types of investment are subject to additional restrictions. Investment areas that have been reserved for Fiji Island nationals include small scale businesses such as cafeterias, taxis/buses, handicrafts, tailoring, shoe repair, plumbing/electrical, plant nurseries, day-care, bakeries, backpacker and liquor bar operations. With the exception of fishing enterprises, which must have at least 30% local equity, investors must meet certain minimum investment thresholds prior to investment in restricted industries. Full listings of reserved and restricted areas can be found at: www.ftib.org.fj/invest-fiji-foreign-act.cfm.

Foreign investors can acquire real estate. However, the land situation in Fiji is complex and only a small percentage of land is available for purchase. If the property is larger than one acre, the Minister of Lands must approve the purchase. There are industry-specific incentives for tourism, mining, filmmaking and audio-visual activities, boat building, fishing, logging and saw milling operations, and bus building.

Conversion and Transfer Policies

Following the December 2006 coup, the Reserve Bank of Fiji (RBF) introduced enhanced foreign exchange controls aimed at curbing credit growth, relieving pressure on Fiji's foreign reserves and avoiding a devaluation of the Fiji dollar. Previously, foreign investors bringing in funds or equipment to invest in Fiji and who fulfilled all regulatory requirements were guaranteed repatriation of their investment profits and capital. The new controls impose new regulatory requirements and limit the amount of investment profit and capital that may be repatriated. Some of the controls were relaxed in 2008, including those on advance payments for imports and local borrowing by foreign-owned companies, but the majority are expected to remain in place through 2009.

Although the Fiji dollar remains fully convertible, the Reserve Bank has temporarily suspended offshore investments by non-bank financial institutions, companies and individuals. It has rescinded commercial banks' delegated authority to process a number of typically larger types of transactions such as profit remittances and has reduced the limits on a number of transactions over which the banks retain authority. Transactions above these require express Reserve Bank permission. The Reserve Bank has also introduced a credit ceiling on lending by individual commercial banks, although

no limits were placed on individual customers. The Reserve Bank has said it will consider individual lending requests above the new limits on a case-by-case basis.

Prior to the post-coup restrictions, the processing time for remittance applications was approximately three working days, provided all required documentation was provided. Transactions within the newly reduced limits of the commercial banks' delegated authority still process within this general timeframe. Remittance through parallel markets continues to require prior approval by the Reserve Bank.

Expropriation and Compensation

Under Section 40 of the Constitution and the Foreign Investment Act, a foreign investor has the same protection against compulsory acquisition of property as any other person. The foreign investor has the same right as a national enterprise of recourse to the courts and other tribunals of the Fiji Islands in respect of the settlement of disputes.

Expropriation has not historically been a common phenomenon in Fiji.

Dispute Settlement

The legal system in Fiji developed from British law. Under Fiji's Constitution, the Fiji Islands Supreme Court is the final court of appeal. Both companies and individuals have recourse to legal treatment through the system of local and superior courts. Laws govern all aspects of commercial transactions, including bankruptcy law, and the courts have generally enforced these laws in a transparent and consistent manner. A foreign investor has the right of recourse to the courts and other tribunals of Fiji with respect to the settlement of disputes.

Following the December 2006 coup, however, the military appeared to intercede in a dispute over the closure by a foreign investor of a major Fiji gold mining operation. The mine's workforce appealed to the military commander, calling on the interim government to investigate the foreign owners' claims the mine was no longer viable. Army troops occupied the mining company property for several days, and the interim government established a committee to investigate the company's closure decision and recommend response options for the government. Also, in January 2007 it was reported that the military had taken files from the Fiji company registry without warrants as part of its self-initiated investigation into possible corruption.

Past investment disputes have often focused on land issues, particularly in the logging and tourism sectors. Such disputes have been resolved through labor-management dialogue, government intervention, referral to compulsory arbitration, or through the courts.

Fiji is a party to the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States.

Performance Requirements and Incentives

To support the implementation of newly approved investments, the FTIB's Investment Division - Facilitation Unit has established a

monitoring system to assist companies in obtaining necessary approvals to commence operations. The investing firm must ensure that commercial production begins within 12 months of the date of approval of the project.

Foreign investors can apply for incentives following registration with the FTIB (www.ftib.org.fj). Information on incentive packages for investors can be obtained from FTIB. Incentives offered include preferential tax treatment and duty free or low duty treatment of imported materials and equipment. The incentives reflect the Fiji Government's long-term concerted efforts to encourage exports and develop priority sectors, including tourism, commercial agriculture, fisheries, forestry, the filmmaking and audio visual industry, and the information technology industry. Fiji's 2009 budget also includes incentives to encourage bio-fuel

and renewable energy initiatives and the establishment of a tax free region in the northern and maritime island regions of the country for investments above F\$2 million.

Tourism incentives include tax-related investment allowances on approved expenditures on tourist boats/ships and approved building and expansion projects. The 2009 tourism incentive package provides for 55 percent investment allowance on total expenditure and a hotel incentive package, whereby large tourism development projects with capital investments of more than F\$7 million may qualify for a 10-year tax holiday. Filmmaking and audio-visual incentives include an increase in the film tax rebate from 15 percent to 35 percent.

The Ministry for Industry, Tourism, Trade and Communication and the Ministry for Foreign Affairs, International Cooperation and Civil Aviation control import and export policy. Commercial import policy includes consideration of tariff measures, import restrictions, quota arrangements and other policies designed to assist development of local industries.

Most imports are subject to import duty, which is levied at various rates in accordance with the Customs Tariff Act of 1986. Such duties may be waived or reduced upon eligibility for investment incentives. Most goods may be imported without an import license. However, there are restrictions on the import of a number of products to protect local industries or for the purposes of quarantine. The restrictions are absolute for some products, while others may be imported subject to conditions imposed by statute or under license from the Ministry of Industry, Ministry of Primary Industries, or other relevant ministries or departments. Quotas may be placed on imports of particular products, such as motor vehicles.

Right to Private Ownership and Establishment

Foreign investors are discouraged from acquiring controlling interest in, or taking over established, locally owned enterprises in Fiji. Permission may be given, however, if such an acquisition or takeover is deemed to be in the national interest. Foreign investors typically operate through a branch or a local subsidiary in Fiji. Formation of both public and private companies is possible, the process taking about two weeks. Registration costs are nominal. The South Pacific Stock Exchange and authorized banks in Fiji are allowed to approve investments by non-resident individuals and businesses in publicly listed companies and in fixed deposit accounts for amounts up to F\$5 million (US\$2.9 million) per investor, per annum. Investments above F\$5 million must be approved by the Reserve Bank of Fiji. A public company must have a minimum of seven shareholders, with no maximum; a private company must have a minimum of two shareholders and a maximum of 50. There are no nationality or residence restrictions on shareholders, but applications for the issue of new or additional shares for increased capitalization should be submitted to the Reserve Bank of Fiji for processing before share certificates may be issued to nonresidents.

Protection of Property Rights

Intellectual Property

Fiji's Copyright Laws are in conformity with World Trade Organization (WTO) Trade Related Aspects of Intellectual Property (TRIPS) provisions. However, while copyright laws adhere to international laws, and provisions are available for companies to register a trademark or petition for a patent in Fiji through the Office of the Administrator General of Trademark, Patents, Designs and Copyrights, the enforcement of these laws remains inadequate. Illegal materials, and illegal reproductions of films, sound recordings and computer programs are widely available throughout Fiji.

Contact: Administrator General, Trademarks, Patents, Designs, Copyrights P.O. Box 2226, Government Buildings, Suva; Telephone: (679) 3312-798; Fax: (679) 3300662; and
Fiji Audio Visual Industry Association, G.P.O. Box 16353, Suva; Telephone: (679) 3318912; Fax: (679) 3318910; Email: favia@ifiji.com

Land Rights

Land ownership and usage is a highly complex and sensitive issue in Fiji society. In late December 2006, the post-coup interim government imposed a temporary ban on all land sales after receiving reports of alleged irregularities in the development and sale of land to foreigners. The ban was partially lifted in January 2007. Leases of so-called native title land, which constitutes 87.75% of Fiji land, to non-Fiji residents and foreign nationals remain restricted, but the government has said it hopes to lift this restriction at a later date.

Land in Fiji falls into three categories: Native land, Crown land, and Freehold land. Native Land refers to the 87.75% of the land held by indigenous Fijians under communal tenure relationships. This land, which is reserved for the special use of its owners, may not be sold, only leased. The Native Lands Trust Board (NTLB) is the statutory body responsible for managing native land, including leases. In its post-coup anti-corruption drive, the interim government dismissed several NTLB officials and undertook a major investigation of the board's past practices. Government plans a major reform of the NTLB and the regulation of land usage, which could affect investors.

Crown Land refers to the 3.95% of the land in Fiji owned by the government. Like NLTB land, Government (Crown) land may not be sold. The availability of crown land for leasing is usually advertised. This does not, however, preclude consideration being given to individual applications in cases where land is required for special purposes.

Freehold, private land accounts for 8.06% of total land area.

Investors may lease land, though each lease category has different conditions and terms. Leases may be sold, transferred and amended, but such dealings are subject to the consent of the NLTB and Lands Department.

Government leases for industrial purposes can be up to 99 years with rents reassessed every 10 years. NLTB leases for land nearer to urban locations are normally for 50-75 years. Annual rent is reassessed every 5 years. The maximum rent that can be levied in both cases is 6% of unimproved capital value. Leases also usually carry development conditions that require lessees to effect improvements within a specified time. Investors need to be mindful of the interim government's investigations into the NLTB for fraud, mismanagement and corruption, as these may affect future dealings and the lease of native title land.

Apart from the requirements of the NLTB and Lands Department, town planning, conservation and other requirements specified by central and local government authorities affect the use of land. Investors are urged to seek local legal advice in all transactions involving land.

Contacts: Permanent Secretary, Ministry of Lands and Mineral Resources, P.O. Box 2222, Government Buildings Suva; Telephone: (679) 3211-556; Fax: (679) 3302-730

General Manager, Native Land Trust Board, P.O. Box 116, Suva; Telephone: (679) 3312-733; Fax: (679) 3229-696

Transparency of Regulatory System

Although the government has made some positive efforts, there is a perception among foreign investors of a lack of transparency in government procurement and approval processes. Some foreign investors considering investment in Fiji have encountered lengthy and costly bureaucratic delays. Investment disputes involving the government in 2007 and 2008 have raised serious transparency concerns.

Prior to the coup, proposed laws frequently were not submitted for public comment. However, a parliamentary committee process was in the process of development. Since the coup, legislation has been by presidential decree.

Efficient Capital Markets and Portfolio Investment

Fiji has a well-developed banking system supervised by the Reserve Bank of Fiji. The RBF regulates the Fiji monetary and banking systems, manages the issuance of currency notes, administers exchange controls, and provides banking and other services to government. In addition, it provides lender-of-last-resort facilities and regulates trading bank liquidity.

There are five trading banks with established operations in Fiji: ANZ Bank, Bank of Baroda, Colonial National Bank, Bank South Pacific, and Westpac Banking Corporation. In addition, non-banking financial institutions provide financial assistance and borrowing facilities to the commercial community and to consumers. These institutions include the Fiji Development Bank, Fiji National Provident Fund, Housing Authority, Credit Corporation, Merchant Finance, and insurance companies. As of September 2008, total assets of commercial banks amounted to US\$2.4 billion (F\$3.97 billion).

The Capital Markets Development Authority (CMDA), formed in 1998, is responsible for the development of capital markets and regulation of market participants. As a result, a capital market is slowly emerging, with 16 companies listed on the Suva-based South Pacific Stock Exchange. The Regulation and Compliance Division of the CMDA is responsible for the regulation and supervision of the market.

Political Violence

Fiji has suffered four coups d'etat in its history: two in 1987, one in 2000 and one in December 2006. There was, in addition, a mutiny within the Fiji military in November 2000. In May 2000, then Prime Minister Mahendra Chaudhry and members of his government were held hostage by a group of Fijian nationalists. In the end, Fiji's military intervened, removed the coup leaders, and installed an interim government that remained in power after 2001 general elections. Largely the same government was again returned to office following elections in May 2006.

Fiji remained relatively stable from 2000 to 2006. Mounting tensions between the government and the military peaked in December 2006 when the military staged a repressive but relatively bloodless coup. Parliament was dissolved, the prime minister deposed and effectively exiled to an outer island, and the vice president, government ministers and senior bureaucrats removed from office. In January 2007, the military named an interim government to govern until national elections can be held, with the military commander as prime minister. The military committed numerous human rights violations in attempting to silence critics of the overthrow. It declared a state of emergency and eliminated or restricted many civil rights. In May 2007, the formal state of emergency was lifted, though it was reimposed for 30 days in early September 2007.

The interim government initially promised to hold elections in March 2009. It has subsequently refuted this commitment and refuses to commit to a timetable for elections.

Corruption

Credible allegations regarding misuse of government funds or abuse of public office have been raised repeatedly over recent years, especially in the annual Auditor General's reports. The limited accountability for corruption, inefficient government systems and lack of effective disciplinary processes pose major challenges to Fiji's fight against corruption. Fiji's relatively small population and limited circles of power often lead to personal relationships playing a major role in business and government decisions.

Alleged corruption in government and the civil service was cited by the military as a major justification for its overthrow of Fiji's democratically elected government in 2006. The military itself, however, has suffered from a lack of a transparent budgetary process and has itself evaded the Auditor General's investigations. Although the previous government had announced anti-corruption initiatives, including the establishment of an anti-corruption commission and the legislating of a Freedom of Information Bill, progress was slow in implementing these initiatives. The interim government has established an independent commission against

corruption, with broad powers of investigation. However, implementing rules for the Fiji Independent Commission Against Corruption (FICAC) were established by proclamation and may be challenged at a later date in court.

Fiji has yet to sign the UN Convention Against Corruption, and there is little evidence to suggest that it will do so in the near future.

At present, the media, Transparency International Fiji, and the non-governmental Pacific Center for Public Integrity (PCPI) play important roles in raising anti-corruption issues.

Bilateral Investment Agreements

Fiji has negotiated double taxation agreements with the United Kingdom, New Zealand, Australia, Korea, Malaysia, Singapore, Vanuatu and Papua New Guinea. Fiji has not entered into a bilateral investment agreement with the United States or any other country.

Fiji is party to a number of regional and international trade arrangements, including the South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA), an Economic Partnership Agreement (EPA) with the EU, and the Generalized System of Preferences. Under SPARTECA, Fiji has broad, duty-free access to the markets of Australia and New Zealand for its exports, subject to certain exceptions and limitations. In November 2007, Fiji signed an interim EPA on trade in goods, replacing the trading section of the Cotonou Agreement, which secures preferential access to the EU market for some Fiji exports (notable exceptions being sugar and rice). Fiji is also party to regional trade agreements PICTA, PACER, and the Melanesian Spearhead Group.

OPIC and Other Investment Insurance Programs

The U.S. Overseas Private Investment Corporation (OPIC) provides investment insurance in Fiji for qualified applicants. The risks of currency convertibility and expropriation are safeguarded under Fiji's foreign-exchange regulations. OPIC provides political risk insurance and loans for qualified projects. Fiji is not a member of the Multilateral Investment Guarantee Agency.

The Fiji dollar is pegged to a basket of currencies of Fiji's principal trading partners, chiefly Australia, New Zealand, the United States, the European Union and Japan.

Labor

The workforce in 2006 was estimated at 369,300, of which about 34 percent are in formal, paid employment. Nearly 80 percent of the workforce has been educated to a secondary school level, and four percent have received a university-level education or post-secondary school technical training.

Fiji continues to face a "brain drain", with many skilled and professional workers migrating overseas for better working and living conditions. Acute shortages are found in the medical field, with half the annual nursing graduates migrating each year.

The Ministry of Employment and Industrial Relations has responsibility for the administration of labor laws and the encouragement of good labor relations.

A new Employment Relations Act was promulgated by decree in April 2008. This legislation consolidates and updates Fiji's labor and employment laws. The new legislation mandates that labor disputes be resolved through soon-to-be-established mediation courts and tribunals.

Fiji has been a member of the International Labor Organization since 1974 and has ratified 25 ILO conventions.

Foreign-Trade Zones/Free Ports

To encourage development in the northern and maritime regions of Fiji, each has been declared a Tax Free Region (TFR). Businesses that are established in such a region and meet the prescribed requirements will enjoy a 13-year corporate tax holiday and import

duty exemption on raw materials, machinery and equipment.

Foreign Direct Investment Statistics

According to data provided by the Fiji Islands Trade and Investment Bureau, total foreign investment proposals approved in 2006 and 2007 amounted to US\$630.5 million and US\$327.1 million respectively. In the same period, U.S.-based investments approved in 2006 and 2007 totaled US\$122.5 million and US\$31.3 million. Approval is a precondition but does not necessarily mean that an actual investment will be made. The Reserve Bank of Fiji estimates that in 2007 foreign direct investment was the equivalent of 15% of GDP.

Web Resources

Fiji Islands Trade and Investment Bureau (FTIB), www.ftib.org.fj
Fiji Government, www.fiji.gov.fj
Fiji Government - Ministry of Foreign Affairs, International Co-operation & Civil Aviation, www.foreignaffairs.gov.fj
Fiji Government - Ministry of Lands, Mineral Resources & Environment, www.lands.gov.fj
Reserve Bank of Fiji, www.rbf.gov.fj
Capital Markets Authority of Fiji, www.cmda.com.fj
Native Land Trust Board (NLTB), www.nltb.com.fj
Mineral Resources Department, www.mrd.gov.fj/qfiji/
Fiji Islands Customs & Revenue Authority, www.frca.org.fj
Secretariat of the Pacific Community (SPC), www.spc.org.nc
Pacific Islands Forum Secretariat, www.forumsec.org.fj
OPIC, www.opic.gov
ILO, www.ilo.org/public/english/region/asro
Bureau of Statistics, www.statsfiji.gov.fj
Asian Development Bank - South Pacific Subregional Office, www.adb.org/SPSO/

MCGANN